A09 - Annual Review of Connecticut Supreme Court and Appellate Court Cases (2024CLC-A09)

Monday, June 10, 2024

9:00 a.m. to 10:00 a.m.

Connecticut Convention Center

Hartford, CT

CT Bar Institute, Inc.

CT: 1.0 CLE Credits (General)
NY: 1.0 CLE Credits (AOP)

No representation or warranty is made as to the accuracy of these materials. Readers should check primary sources where appropriate and use the traditional legal research techniques to make sure that the information has not been affected or changed by recent developments.

Table of Contents

Lawyers' Principles of Professionalism **3**

Faculty Biographies **6**

Agenda **8**

2024 Supreme Court Review **9**

2024 Appellate Court Review **16**

Approved by the House of Delegates October 19, 2020

LAWYERS' PRINCIPLES OF PROFESSIONALISM

As a lawyer, I have dedicated myself to making our system of justice work fairly and efficiently for all. I am an officer of this Court and recognize the obligation I have to advance the rule of law and preserve and foster the integrity of the legal system. To this end, I commit myself not only to observe the Connecticut Rules of Professional Conduct, but also conduct myself in accordance with the following Principles of Professionalism when dealing with my clients, opposing parties, fellow counsel, self-represented parties, the Courts, and the general public.

Civility:

Civility and courtesy are the hallmarks of professionalism. As such,

- I will be courteous, polite, respectful, and civil, both in oral and in written communications;
- I will refrain from using litigation or any other legal procedure to harass an opposing party;
- I will not impute improper motives to my adversary unless clearly justified by the facts and essential to resolution of the issue;
- I will treat the representation of a client as the client's transaction or dispute and not as a dispute with my adversary;
- I will respond to all communications timely and respectfully and allow my adversary a reasonable time to respond;
- I will avoid making groundless objections in the discovery process and work cooperatively to resolve those that are asserted with merit;
- I will agree to reasonable requests for extensions of time and for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;
- I will try to consult with my adversary before scheduling depositions, meetings, or hearings, and I will cooperate with her when schedule changes are requested;
- When scheduled meetings, hearings, or depositions have to be canceled, I will notify my adversary and, if appropriate, the Court (or other tribunal) as early as possible and enlist their involvement in rescheduling; and
- I will not serve motions and pleadings at such time or in such manner as will unfairly limit the other party's opportunity to respond.

Honesty:

Honesty and truthfulness are critical to the integrity of the legal profession – they are core values that must be observed at all times and they go hand in hand with my fiduciary duty. As such,

- I will not knowingly make untrue statements of fact or of law to my client, adversary or the Court;
- I will honor my word;
- I will not maintain or assist in maintaining any cause of action or advancing any position that is false or unlawful;

- I will withdraw voluntarily claims, defenses, or arguments when it becomes apparent that they do not have merit or are superfluous;
- I will not file frivolous motions or advance frivolous positions;
- When engaged in a transaction, I will make sure all involved are aware of changes I make to documents and not conceal changes.

Competency:

Having the necessary ability, knowledge, and skill to effectively advise and advocate for a client's interests is critical to the lawyer's function in their community. As such,

- I will keep myself current in the areas in which I practice, and, will associate with, or refer my client to, counsel knowledgeable in another field of practice when necessary;
- I will maintain proficiency in those technological advances that are necessary for me to competently represent my clients.
- I will seek mentoring and guidance throughout my career in order to ensure that I act with diligence and competency.

Responsibility:

I recognize that my client's interests and the administration of justice in general are best served when I work responsibly, effectively, and cooperatively with those with whom I interact. As such,

- Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the Court (or other tribunal) and my adversary of any likely problem;
- I will make every effort to agree with my adversary, as early as possible, on a voluntary exchange of information and on a plan for discovery;
- I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;
- I will be punctual in attending Court hearings, conferences, meetings, and depositions;
- I will refrain from excessive and abusive discovery, and I will comply with all reasonable discovery requests;
- In civil matters, I will stipulate to facts as to which there is no genuine dispute;
- I will refrain from causing unreasonable delays;
- Where consistent with my client's interests, I will communicate with my adversary in an effort to avoid needless controversial litigation and to resolve litigation that has actually commenced;
- While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation.

Mentoring:

I owe a duty to the legal profession to counsel less experienced lawyers on the practice of the law and these Principles, and to seek mentoring myself. As such:

- I will exemplify through my behavior and teach through my words the importance of collegiality and ethical and civil behavior;
- I will emphasize the importance of providing clients with a high standard of representation through competency and the exercise of sound judgment;
- I will stress the role of our profession as a public service, to building and fostering the rule of law;
- I will welcome requests for guidance and advice.

Honor:

I recognize the honor of the legal profession and will always act in a manner consistent with the respect, courtesy, and weight that it deserves. As such,

- I will be guided by what is best for my client and the interests of justice, not what advances my own financial interests;
- I will be a vigorous and zealous advocate on behalf of my client, but I recognize that, as an officer of the Court, excessive zeal may be detrimental to the interests of a properly functioning system of justice;
- I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;
- I will, as a member of a self-regulating profession, report violations of the Rules of Professional Conduct as required by those rules;
- I will protect the image of the legal profession in my daily activities and in the ways I communicate with the public;
- I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance; and
- I will support and advocate for fair and equal treatment under the law for all persons, regardless of race, color, ancestry, sex, pregnancy, religion, national origin, ethnicity, disability, status as a veteran, age, gender identity, gender expression or marital status, sexual orientation, or creed and will always conduct myself in such a way as to promote equality and justice for all.

Nothing in these Principles shall supersede, supplement, or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which a lawyer’s conduct might be judged, or become a basis for the imposition of any civil, criminal, or professional liability.

Faculty Biographies

Kenneth J. Bartchi

Kenneth Bartschi is Of Counsel to the Hartford office of McElroy, Deutsch, Mulvaney & Carpenter, LLP, where his practice includes appellate litigation in civil, family, constitutional, and criminal matters. He has argued numerous cases in the Connecticut Supreme Court and Appellate Court that have had significant impacts on the law, including *Millbrook Owners Association v. Hamilton Standard*, 257 Conn. 1 (2001), and *Ramin v. Ramin*, 281 Conn. 324 (2007) (en banc). He served as cooperating counsel with Gay & Lesbian Advocates & Defenders in the landmark marriage-equality case, *Kerrigan v. Commissioner of Public Health*, 289 Conn. 135 (2008) (en banc). He was previously a member of the Hartford firm of Horton, Dowd, Bartschi & Levesque, P.C. He is a member of the bars of the State of Connecticut, the State of New York, the United States District Court for the District of Connecticut, the Second Circuit Court of Appeals, and the United States Supreme Court.

Attorney Bartschi serves as co-author of West's *Connecticut Rules of Appellate Procedure (Annotated)* with Wesley Horton and has done so since the 2004 Edition. Along with Attorney Horton, Attorney Bartschi has co-authored the annual Appellate Review for the Connecticut Bar Journal since the 2000 Review. He is also one of the co-authors of the Connecticut Practice Book Annotated (4th Ed.), published by West and *MCLE New England, A Practical Guide to Divorce in Connecticut*.

Attorney Bartschi is a fellow of the American Academy of Appellate Lawyers. In 2006, he was a co-recipient of the Judge Maxwell Heiman Award from the Hartford County Bar Association. He serves on the executive committees of the Appellate Advocacy and LGBT sections of the Connecticut Bar Association and is a member of the Human Rights and Responsibilities section. He previously served as co-chair of the HRR Section and as a member of the Board of Directors for the Connecticut Women's Education and Legal Fund. He has appeared on seminar panels, speaking on appellate issues, and is frequently asked to judge moot court competitions and classes at the UConn School of Law. Attorney Bartschi earned a Bachelor of Music in music education from Potsdam College in 1987 and holds a Masters of Music degree in performance from Arizona State University, which he earned in 1989. He graduated with honors from the UConn Law School in 1996.

Karen L. Dowd

Attorney Dowd is a Partner at McElroy, Deutsch, Mulvaney & Carpenter, practicing in the Hartford, Connecticut office. (She has the best view in the office). She was previously a principal at Horton, Dowd, Bartschi & Levesque, P.C.

Attorney Dowd's practice includes trial and appellate litigation in Connecticut state and federal courts. She is admitted to practice in Connecticut state courts as well as in the United States District Court for the District of Connecticut, the United States Court of Appeals for the Second

Circuit, and the United States Supreme Court. Attorney Dowd was named The Best Lawyers "Lawyer of the Year" for Appellate Practice in Hartford for 2022. To learn more about the "Lawyer of the Year" awards, please visit https://www.bestlawyers.com/methodology#LOTY.

Attorney Dowd consults with trial counsel on presenting legal issues at trial and in preparing cases in the event of an appeal. She assists trial counsel in preparing and presenting motions, drafting jury instructions, and responding to post-verdict motions.

Attorney Dowd also represents attorneys in professional responsibility matters and bar admission applicants. She has been listed in Best Lawyers since 2011 for Ethics and Professional Responsibility Law. For methodology, see https://www.bestlawyers.com/methodology. She edits the CBA Professional Discipline Digest (2012-present).

Attorney Dowd co-authors the annual Connecticut Practice Book Annotated, Vol. 1, providing author's comments to chapters on pleadings and motions. She co-authored Connecticut Insurance Law.

Attorney Dowd served as Chair of the Connecticut Bar Association Litigation Section from 2005 to 2007 after serving as an officer for the prior four years. She continues to serve on the Litigation Section Executive Committee as an Honorary Member. Attorney Dowd taught written and oral advocacy in the Moot Court interterm at the University of Connecticut School of Law. She is a member of the Board of Directors of the Granby Land Trust.

Annual Review of Connecticut Supreme Court and Appellate Court Cases
(2024CLC-A09)
2024 Connecticut Legal Conference
Connecticut Convention Center
June 10, 2024
9:00 a.m. – 10:00 a.m.

Agenda

Presenters:
Kenneth J. Bartschi, McElroy Deutsch Mulvaney & Carpenter LLP, Hartford
Karen L. Dowd, McElroy Deutsch Mulvaney & Carpenter LLP, Hartford

9:00 a.m. - 9:30 a.m.:	Attorney Bartschi will discuss the past year's Connecticut Supreme Court cases.
9:30 a.m. - 10:00 a.m.:	Attorney Dowd will discuss the past year's Connecticut Appellate Court cases.

2024 SUPREME COURT REVIEW

Connecticut Legal Conference – June 10, 2024

By Kenneth J. Bartschi

I. PERSONNEL

- Justice Nora Dannehy was appointed in September 2023 to fill the vacancy created when former Justice Maria Araujo Kahn resigned to take a seat on the Second Circuit Court of Appeals.

II. DECISIONS

A. Constitutional

State v. Avoletta, 347 Conn. 629 (2023)

- A special act extending the time the defendants had to bring an action against the state for alleged injuries to children due to bad air quality in schools was an unconstitutional public emolument in violation of Article First, § 1 of the Connecticut constitution.

Direct Energy Services, LLC v. Public Utilities Regulatory Authority, 347 Conn. 101 (2023)

- Marketing restrictions and regulations pertaining to renewable energy credits outside a specific region did not violate the Dormant Commerce Clause.

Alico, LLC v. Somers, 348 Conn. 550 (2023)

- Subjecting motor vehicles to Connecticut property tax where the vehicles were registered in Massachusetts and subject to an excise tax there but garaged in Connecticut did not violate the Dormant Commerce Clause.

State v. Langston, 346 Conn. 605 (2023)

- A sentencing court may consider conduct pertaining to a charge of which the defendant was acquitted without violating the Sixth Amendment right to a jury, but the sentence cannot exceed the statutory maximum.

State v. Samuel U., 348 Conn. 304 (2023)

- Federal constitution does not require the state to provide pretrial notice of uncharged misconduct evidence it intends to offer.

B. Criminal & Habeas

State v. James K., 347 Conn. 648 (2023)

- Clarifying that to show reversible error during voir dire, defendant must show abuse of discretion and harmful error.

State v. Henderson, 348 Conn. 648 (2024)

- Declining to overrule *State v. Arroyo*, 292 Conn. 558 (2009), cert. denied, 559 U.S. 911 (2010), which held that legally inconsistent verdicts are not reviewable on appeal
- Trial court did not abuse its discretion in denying a motion for mistrial based on 25-day interruption in jury deliberations because the defendant contracted Covid

State v. Butler, 348 Conn. 51 (2023)

- The four-month rule for opening a civil judgment as set forth in General Statutes § 52-212a and Practice Book § 17-4 does not apply to a criminal cases.

Banks v. Commissioner of Correction, 347 Conn. 335 (2023)
Bosque v. Commissioner of Correction, 347 Conn. 377 (2023)

- Requirement for certification to appeal a habeas decision does not preclude plain error or *Golding* review of claims arising in the habeas court but not include in the petition for certification.

Maia v. Commissioner of Correction, 347 Conn. 449 (2023)

- Habeas counsel was not deficient in not advising the petitioner to accept a plea deal where counsel advised the petitioner of the strength of the state's case and the weakness of the petitioner's defenses.

Rose v. Commissioner of Correction, 348 Conn. 333 (2023)

- Ineffective assistance of counsel is an external factor that may overcome presumption statutory presumption that a habeas petition filed more than five years after the conviction is deemed final lacks good cause.

Felder v. Commissioner of Correction, 348 Conn. 396 (2024)

- Where, pursuant to General Statutes § 52-470(d), a successive habeas petition filed more than two years after the prior petition is deemed final is presumptively without merit absent a showing of good cause for the delay, the two-year period runs from the last state-court petition, not the latest federal petition.

C. Appellate Procedure

Benvenuto v. Brookman, 348 Conn. 609 (2024)

- Order granting bill of discovery regarding a blogger's laptop and cell phone was not a final judgment for appellate purposes where the parties were ordered to try to agree on the search protocols and the court retained jurisdiction to resolve any impasses the parties reached.

O'Sullivan v. Haught, 348 Conn. 625 (2024)

- Appellate Court improperly dismissed an appeal from denial of summary judgment where there was a colorable claim of collateral estoppel.
- Supreme Court exercised its supervisory powers to decide the merits where the parties had briefed the issue and had an opportunity to address the merits at oral argument.

D. Civil Procedure

Schoenhorn v. Moss, 347 Conn. 501 (2023)

- Trial court properly dismissed a writ of mandamus that sought sealed transcripts in another case as the action was an impermissible collateral attack and therefore nonjusticible.

Mercedes-Benz Financial v. 1188 Stratford Avenue, LLC, 348 Conn. 796 (2024)

- Trial court's factual error that a motion to open a default judgment pursuant to General Statutes § 52-212 was untimely undermine its analysis that the defendant failed to articulate good cause and a good defense to justify opening the judgment.

E. Administrative

Commissioner of Mental Health & Addiction Services v. Freedom of Information Commission, 347 Conn. 675 (2023)

- Police report at state hospital did not fall within the definition of "communications and records" that General Statutes § 52-146e shields from disclosure under the Freedom of Information Act.

Drumm v. Freedom of Information Commission, 348 Conn. 565 (2024)

- To show that police files are exempt from FOIA requests, the records custodian must show that that a future law enforcement action was a reasonable possibility.

E. Administrative (cont.)

GenConn Energy, LLC v. Public Utilities Regulatory Authority, 348 Conn. 532 (2024)

- PURA properly applied general rate-making principles set forth in General Statutes § 16-29e to peaking generation facilities governed by General Statutes § 16-243u.

Marshall v. Commissioner of Motor Vehicles, 348 Conn. 778 (2024)

- Failure to comply with the three-day period for preparation and transmittal of a police report in a DUI matter as required by General Statutes § 14-227b renders the report inadmissible in an administrative hearing.

F. Arbitration

Ahmed v. Oak Management Corp., 348 Conn. 152 (2023)

- Arbitrator properly relied on fugitive disentitlement doctrine to limit the plaintiff's participation in arbitration proceeding.

G. Torts

Khan v. Yale University, 347 Conn. 1 (2023)

- Proceedings before campus committee on sexual misconduct were not quasi-judicial for the purposes of absolute immunity to a defamation suit
- Accuser may have qualified immunity, but allegations of malice precluded application of qualified immunity as a matter of law at that stage of the proceedings.

Adesokan v. Bloomfield, 347 Conn. 416 (2023)

- Discretionary act immunity does not apply to the manner in which an emergency vehicle is operated.

Mills v. Hartford HealthCare Corp., 347 Conn. 524 (2023)

- An executive order conferring immunity from suit and liability on health-care workers for actions in support of the state's efforts to address COVID-19 did not apply to all actions during the Covid emergency, nor was it limited to treating Covid patients, but applied to "acts and omissions that are undertaken in good faith and in connection with such services."

Manginelli v. Regency House of Wallingford, Inc., 347 Conn. 581 (2023)

- The defendant failed to establish a nexus between the purported lack of resources due to Covid and the negligent actions the plaintiff alleged.

G. Torts (cont.)

Escobar-Santana v. State, 347 Conn. 601 (2023)

- Medical malpractice action was broad enough to encompass claims of emotional distress damages caused by physical injuries to the plaintiff's child during the delivery process.

Canner v. Governors Ridge Assn. Inc., 348 Conn. 726 (2024)

- The three-year statute of limitations set forth in General Statutes § 52-577 applied to a claim of negligent construction of the foundations of condominiums and ran from when plaintiffs bought the unit.
- The six-year statute of limitations applied to claims that the condo association failed to make repairs pursuant to the bylaws and ran from when the association ceased trying to repair the foundations.

H. Civil Rights

Commission on Human Rights & Opportunities v. Cantillon, 347 Conn. 58 (2023)

- A commission hearing officer was not bound to award a minimum amount of "garden variety" emotional distress damages.

I. Employment

Hartford Police Dept. v. Commission on Human Rights & Opportunities, 347 Conn. 241 (2023)

- Substantial evidence existed to support the referee's finding of discrimination under a transferred-intent/cat's paw theory.

Clark v. Waterford, Cohanzie Fire Dept., 346 Conn. 711 (2023)

- Because a part-time firefighter generally had to work twenty hours per work to qualify for heart and hypertension benefits, a remand was necessary to make the factual findings necessary to assess the claim.

Middlebury v. Fraternal Order of Police, Middlebury Lodge No. 34, 348 Conn. 251 (2023)

- State board was not required to adopt new NLRB standard for assessing whether unilateral change to formula for calculating pensions violated collective bargaining agreement.

J. Contracts

Stiegler v. Meriden, 348 Conn. 452 (2024)

- Where parties agree that interpretation of contract is a question of law and do not submit extrinsic evidence, but the reviewing court determines the contract is ambiguous, the contract language is reviewed anew.

K. Family

Tilsen v. Benson, 347 Conn. 758 (2023)

- Trial court properly declined to enforce a ketubah (Jewish marriage contract) because doing so would entangle court in religious doctrine in violation of the First Amendment.

Hepburn v. Brill, 348 Conn. 827 (2024)

- The 2012 amendments to General Statutes § 46b-59, which governs third-party visitation of minor children, obviated the need for the judicial gloss the court applied in *Roth v. Weston*, 259 Conn. 202 (2002), which had imposed specific pleading requirements on the petitioner to obtain standing in order to save the statute from constitutional infirmity. Therefore, adequacy of pleading is no longer jurisdictional but implicates the court's authority to provide relief.

L. Juvenile

In re Gabriel S., 247 Conn. 223 (2023)

- Respondent had actual notice of the grounds for terminating parental rights where the petitioner moved to amend its petition and provided a summary of facts in support, even though the petitioner failed to file the amended petition.

M. Trusts & Estates

Salce v. Cardello, 348 Conn. 90 (2023)

- Enforcement of an *in terrorem* clause would violate public policy where a beneficiary makes a good-faith challenge to a fiduciary.

Barash v. Lembo, 348 Conn. 264 (2023)

- The rule that a probate decree has the preclusive effect notwithstanding an appeal does not apply where the appeal is de novo as the probate proceeding was not on the record.

N. Foreclosure

JPMorgan Chase Bank, National Assn. v. Malick, 347 Conn. 155 (2023)

- An objection to an affidavit of debt pursuant to Practice Book § 23-18, must set forth specific reasons but does not need to be supported by legal argument and admissible evidence.

N. Foreclosure (cont.)

KeyBank, N.A. v. Yazar, 347 Conn. 381 2023

- The notice requirements for the Emergency Mortgage Assistance Program are mandatory but not jurisdictional.

O. Elections

Cohen v. Rossi, 346 Conn. 642 (2023)

- Municipal clerks are not required to retrieve absentee ballots personally from drop boxes.
- There was substantial compliance with requirement that town clerk endorse same day absentee ballots where assistant town clerk endorsed with her own signature rather than clerk's stamped signature as it contained the info required by General Statutes § 9-140c(a).
- Although the clerk's office failed to execute the affidavits required by General Statutes § 9-140c(j) pertaining to the transfer and delivery of absentee ballots, the sworn testimony of elections officials overcome this failure.

Alves v. Giegler, 348 Conn. 364 (2024)

- Town clerk has ministerial obligation to accept and file with the secretary of the state the list of minor candidates that is facially valid pursuan to General Statutes § 9-452.

2024 APPELLATE COURT REVIEW

by Karen L. Dowd

I. HOW THE COURT REVIEWS CASES/ APPELLATE PROCEDURE

- *Cody Real Estate, LLC v. G&H Catering, Inc.*, 219 Conn. App. 773, *cert. denied*, 348 Conn. 910 (2023) (failure to raise claim in trial court precluded appellate review especially where issue required resolution of significant factual issues). See also *Lowthert v. Freedom of Information Commission*, 220 Conn. App. 48 (2023) (no review of issue that was not raised in trial court); *Fraser Lane Associates, LLC v. Chip Fund 7, LLC*, 221 Conn. App. 451 (2023) (no review of claims regarding arbitration award because of failure to present claim to trial court).
- *Netter v. Netter*, 220 Conn. App. 491 (2023) (trial court's final judgment in dissolution case mooted appeal of pendente lite orders addressed to access to the marital home).
- *Lafferty v. Jones*, 220 Conn. App. 724 (2023) (writ of error from trial court order suspending attorney for six months dismissed in part as writ was not timely served on judge; writ of error allowed to continue against Disciplinary Counsel as a properly joined party).
- *Curley v. Phoenix Ins. Co.*, 220 Conn. App. 732, cert. denied, 348 Conn. 914 (2023) (court reviewed claims made for the first time in a motion to reargue, noting the difference between a claim and an argument (claims raised for first time generally not reviewed), then holding that "the circumstances of the case" warrant deviation from the general rules. Those circumstances included that the

appellate issue (subject to de novo review) was before the trial court, defendant responded to the motion reargue on the merits and there was no claim that the failure to raise was a strategic decision).

- *Ochoa v. Behling*, 221 Conn. App. 45 (2023) (court declined to review claim that trial court did not have authority because the plaintiff failed to raise that claim to the trial court).
- *Anderson-Harris v. Harris*, 221 Conn. App. 222 (2023) (preservation rules apply to everyone: it would be manifestly unjust to allow self-represented plaintiff to raise a due process claim for the first time on appeal).
- *Rek v. Petit*, 222 Conn. App. 132 (2023), cert. denied, 348 Conn. 948 (2024) (appeal of order granting visitation to grandparents was moot after trial court granted a motion to terminate that visitation).
- *Stanley v. Scott*, 222 Conn. App. 301 (2023), cert. denied, 348 Conn. 945 (2024) (self-represented appellant); and *Stanley v. Quiros*, 222 Conn. App. 390 (2023), cert. denied, 348 Conn. 945 (2024) (inadequate briefing precluded review of individual issues within the appeal).
- *United States Bank, N.A. v. Rose*, 222 Conn. App. 464 (2023) (appeal dismissed where beneficiary of estate took an appeal on behalf of the estate as a self-represented person). See also *Cazenovia Creek Funding I LLC v. Roman*, 223 Conn. App. 739 (2024) (appeal dismissed as non-attorney individual could not represent trust, nor did he appear to have authority to do so).
- *Speer v. Danjon Capital, Inc.*, 222 Conn. App. 624, 306 A.3d 1162 (2023) (appeal dismissed in part for lack of a final judgment). See also *Connecticut*

Light & Power Co. v. Public Utilities Regul. Authority, 223 Conn. App. 136 (2023) (appeal dismissed for a lack of a final judgment).

- *Gainty v. Infantino*, 222 Conn. App. 785 (2023), cert. denied, 348 Conn. 948 (2024) (failure to raise res judicata, collateral estoppel or issue regarding trial court's authority at trial precluded claims on appeal). See also *Graham v. Graham*, 222 Conn. App. 560 (2023) (failure to raise res judicata or collateral estoppel at trial precluded claim on appeal).
- *State v. Torell*, 223 Conn. App. 21 (2023) (claims of the harm created by the error cannot be addressed for the first time in a reply brief).
- *J.G. v. Curtis-Shanley*, 223 Conn. App. 149 (2023), cert. denied, 2024 Conn. LEXIS 68 (Feb. 27, 2024) (appeal dismissed as sanction for disrespect to the court where self-represented appellant requested to argue remotely, appeared only by audio, hung up when told to correct the lack of video, and did not call back or answer when called).
- *Forestier v. City of Bridgeport*, 223 Conn. App. 298 (2024) (court will not review issues which were not raised in trial court and which trial court expressly said it was not considering; inadequate briefing precludes review).
- *DXR Finance Parent, LLC v. Theraplant*, LLC, 223 Conn. App. 362, cert. denied, 348 Conn. 957 (2024) (decision on motion to dismiss: denial of motion to intervene does not stay trial court proceedings while that order is appealed; where appeal was filed, but no motion to stay was filed and law days passed on strict foreclosure, the appeal was moot).
- *Dessa, LLC v. Riddle*, 223 Conn. App. 457 (2024) (failure to raise claim at trial

precludes review on appeal; decision reversed in part because based on court's own attitudes garnered from personal experience)

- *Hine Builders, LLC v. Glasscock*, 224 Conn. App. 185 (2024) (appeal moot, and dismissed, from order to compel arbitration where trial court granted motion to terminate stay and defendants did not seek review and arbitration commenced).
- *Black Rock Gardens, LLC v. Berry*, 224 Conn. App. 379 (2024) (motion to dismiss appeal granted as case was not subject to protections of anti-SLAPP statute so denial of motion to dismiss was not immediately appealable).
- *Glory Chapel International Cathedral v. Philadelphia Indemnity Ins. Co*., 224 Conn. App. 501 (2024) (filing of substitute complaint following motion to strike waived right to appeal decision on motion to strike; decision striking all counts by party does not drop that party, who can then file a substitute complaint).

II. CRIMINAL LAW & PROCEDURE

- *Valentine v. Commissioner of Correction,* 219 Conn. App. 276, cert. denied, 348 Conn. 913 (2023) (petitioner was not deprived of a fair trial despite nine improper comments by the prosecutor).
- *State v. Sullivan,* 220 Conn. App. 403, cert. granted, 348 Conn. 927 (2023) (prosecutor's use of "nuts and sluts" in rebuttal argument was not improper or harmful, though not condoned by Court) (certification granted on the following question "Did the Appellate Court correctly determine that the prosecutor's rebuttal argument did not constitute prosecutorial impropriety that deprived the defendant of a fair trial?").
- *State v. King*, 220 Conn. App. 549, cert. denied, 348 Conn. 918 (2023) (trial court

lacked subject matter jurisdiction over motion to correct illegal sentence attacking requirement to register as a sex offender as such requirement is not part of the sentence, but a regulatory consequence of the conviction).

- *State v. Despres*, 220 Conn. App. 612 (2023) (trial court had subject matter jurisdiction on motion to correct illegal sentence to address claim that defendant was denied right to defend himself, but not claims regarding counsel's failure to turn over documents).
- *State v. Mieles*, 221 Conn. App. 164, *cert. granted*, 348 Conn. 920 (1023) (imposition of standing criminal protective order nine years after offense did not constitute an improper modification of the judgment: Judge Moll dissented on the grounds that record was inadequate to justify protective order) (certification granted on the following questions: "1. Did the Appellate Court correctly determine that the defendant did not challenge the imposition of the standing criminal protective order on the ground that the trial court had failed to abide by the standard applicable to the imposition of such orders set forth in General Statutes § 53a-40e (a)? 2. If the answer to the first question is 'no,' did the trial court fail to abide by the standard set forth in § 53a-40e (a), and did it abuse its discretion in imposing the standing criminal protective order under the circumstances of this case?").
- *Williams v. Commissioner of Correction*, 221 Conn. App. 294 (2023) (statement favorable to the defense was suppressed; habeas court erred in finding statement was not material as the statement was relevant to victim's credibility).

- *State v. James S.,* 221 Conn. App. 797 (2023), cert. denied, 348 Conn. 932 (2024) (trial court did not violate petitioner's state and federal due process rights by not sua sponte conducting a taint hearing, nor would Appellate Court exercise its supervisory authority to require pretrial taint hearings in child sexual abuse cases).
- *Stephenson v. Commissioner of Correction*, 222 Conn. App. 331 (2023), cert. denied, 348 Conn. 940 (2024) (petitioner's trial counsel did not properly apprise the petitioner that his plea would subject him to mandatory deportation; Judge Elgo concurred to state her concern about the standard for disclosure set forth in *Budziszewski v. Commissioner of Correction*, 322 Conn. 504 (2016)).
- *Clue v. Commissioner of Correction*, 223 Conn. App. 803, cert. granted, 348 Conn. 961 (2024) (in case of first impression, habeas court had authority to open a judgment of dismissal more than four months after it was rendered based upon a claim of ineffective assistance of counsel) (certification granted on the following question: "Did the Appellate Court correctly conclude that, in the absence of fraud, duress or mistake, a habeas court has equitable authority, after the four month period set forth in General Statutes § 52-212a has elapsed, to open a judgment based on the ineffective assistance of habeas counsel?").

III. CIVIL LAW & PROCEDURE

- *Ammar I. v. Department of Children & Families*, 220 Conn. App. 77 (2023), cert. granted, 348 Conn. 906 (2023) (self-represented parent's petition), and cert. denied, 348 Conn. 907 (2023) (intervenor's petition) (pursuant to the litigation privilege, trial court should have dismissed a parent's claim of religious

discrimination against DCF based upon a court order placing the children in temporary custody) (certification granted on the following question: “Did the Appellate Court correctly determine that the litigation privilege barred the plaintiff's lawsuit alleging that the defendant, the Department of Children and Families, had violated Connecticut's antidiscrimination laws by discriminating against the plaintiff on the basis of his religion in connection with certain neglect, custody and termination proceedings involving the plaintiff's children?”).

- *Cornelius v. Markle Investigations*, 220 Conn. App. 135 (2023) (plaintiff previously arrested for having weapons, bomb-making materials, and anti-Semitic and racist materials in home across from school; plaintiff sued school and private investigation firm for invasion of privacy for surveillance after he was released from prison: summary judgment upheld as conduct did not intrude upon solitude or seclusion or private affairs, nor would it be considered highly offensive to reasonable person; Judge Cradle concurred in decision, but disagreed with majority’s consideration of plaintiff’s prior conduct in determination of whether surveillance was highly offensive).
- *Christian v. Iyer*, 221 Conn. App. 869 (2023) (in vexatious litigation case, trial court applied wrong standard to assess good faith reliance on advice of counsel when it failed to determine whether there was full and fair disclosure to counsel).
- *Cameron v. Santiago*, 223 Conn. App. 836 (2024) (trial court’s sua sponte dismissal of action violated plaintiff’s procedural due process rights as she had no notice or opportunity to respond)
- *Northeast Building Supply, LLC v. Morrill*, 224 Conn. App. 137 (2024) (plaintiff

lacked standing on pjr application as vexatious litigation claim is personal tort and therefore cannot be assigned to another).

- *Rodriguez v. City of Hartford*, 224 Conn. App. 314 (2024) (trial court improperly sua sponte considered statute of limitations in denying request to amend) (petitions for cert. filed by plaintiff and defendant).
- *Lyons v. Birmingham Law Office, LLC*, 224 Conn. App. 758 (2024) (trial court properly dismissed for lack of personal jurisdiction over non-resident)
- *Cardoza v. City of Waterbury*, 224 Conn. App. 813 (2024) (defect roadway case properly dismissed as notice "patently" failed to describe defect or cause of injuries).

IV. FAMILY & JUVENILE CASES

- *R.H. v. M. H.*, 219 Conn. App. 716 (2023) (court upheld ex parte order of custody based on violation of a custody order regarding parties' BAC level as trial court could infer defendant was over BAC level the night before, when she had custody, based upon morning BAC level; trial court improperly delegated its authority to decide visitation for one of the children to plaintiff and child's therapist; Chief Appellate Court Judge Bright dissented on majority's interpretation of C.G.S. § 46b-56 holding it was improper delegation to allow sole legal and custodial parent to exercise discretion over noncustodial parent's visitation).
- *Strauss v. Strauss*, 220 Conn. App. 193, cert. denied, 348 Conn. 914 (2023) (trial court did not have authority to vacate five year old contempt orders where defendant sought to vacate them on the basis that they should not have entered).

- *In re Ryan C.*, 220 Conn. App. 507, cert. denied, 348 Conn. 901 (2023) (trial court improperly allowed foster parent to intervene and file motion to transfer guardianship, which improperly affected the court's decision on motions to revoke commitment; court addressed evidentiary issues that may arise on remand).
- *In re Amani O.*, 221 Conn. App. 59 (2023) (trial court exceeded its authority in ordering that reunification efforts cease in response to emergency motion filed by attorney for minor child; both father and DCF appealed).
- *In re Christina C.*, 221 Conn. App. 185, cert. denied, 348 Conn. 907 (2023) (trial court erred in assuming that transfer of guardianship to father's mother, who was not the child's foster parent or custodian, was in best interests of child and shifting burden to DCF to prove the guardianship was not in best interests).
- *Graham v. Graham*, 222 Conn. App. 560 (2023) (offer of compromise statute does not apply to a dissolution of marriage action).
- *Marcus v. Cassara*, 223 Conn. App. 69 (2023) (trial court exceeded its authority in modifying on the basis of grounds not in the motion for modification; also order to pay for children's extracurricular activities was separate order from child support and so not improper deviation from guidelines; Judge Clark concurred in part as he would have held that order to pay for extracurricular expenses was order for child support requiring a specific finding for the order).
- *Zakko v. Kasir*, 223 Conn. App. 205 (2024) (defendant was deprived of due process as court did not allow his counsel to question only witness or offer any of his own evidence at hearing on motion to open)

- *De Almeida-Kennedy v. Kennedy*, 224 conn. App. 19 (2024) (trial court's failure to find substantial change in circumstances where older child changed residence from plaintiff to defendant was clearly erroneous; on remand, trial court must unbundle unallocated support obligation and find presumptive child support amount)
- *Y.H. v. J.B.*, 224 Conn. App. 793 (2024) (trial court erred in not awarding child support on basis that no one asked as defendant repeatedly asked and filed child support guidelines; even if not requested, court needed to consider child was in need of maintenance; remand on all orders).

V. MISCELLANEOUS

- *Bassett v. Town of E. Haven*, 219 Conn. App. 866 (2023) (court upheld denial of worker's compensation benefits to plaintiff who in the course of his employment picked up and intentionally set light to a brown sphere in his hand which then exploded causing serious injuries; injuries *occured* in the course of employment, but did not *arise* in the course of that employment).
- *Haydusky's Appeal from Probate*, 220 Conn. App. 267 (2023)(application for reconsideration of Probate Court order does not toll the time to appeal underlying order).
- In *Brownstone Exploration & Discovery Park, LLC v. Borodkin*, 220 Conn. App. 806 (2023) (court reversed trial court's refusal to compel arbitration as court improperly erred in deciding arbitrability where arbitration agreement expressly provided that arbitrators would decide if claim was arbitrable; also trial court erred in raising sua sponte procedural issues about the application to compel where

parties were given no opportunity to brief or be heard on those issues). The authors represented the plaintiff.

- *A Better Way Wholesale Autos, Inc. v. Better Business Bureau of Connecticut*, 221 Conn. App. 1, cert. denied, 348 Conn. 919 (2023) (court upheld the trial court's grant of summary judgment, holding that the BBB's letter grades were an expression of opinion, and therefore not actionable).
- *AAA Advantage Carting & Demolition Service, LLC v. Capone*, 221 Conn. App. 256, cert. denied, 348 Conn. 924 (2023) (accidental-failure-of-suit statute applied to an action brought improperly in plaintiff's individual capacity, instead of as a derivative suit on behalf of the corporate entity).
- *Barbara v. Colonial Surety Co.*, 221 Conn. App. 337 (2023) (summary judgment affirmed in surety contractual indemnification action, but res judicata or collateral estoppel did not apply to order on motion to enforce judgment in New York proceeding; court noted in footnote that decision on indemnification action would, however, provide a basis for res judicata or collateral estoppel). Attorney Dowd represented Colonial Surety.
- *CCI Computerworks, LLC v. Evernet Consulting, LLC,* 221 Conn. App. 491 (2023) (trial court improperly admitted a settlement letter) (pet. cert. withdrawn).
- *Colandrea v. Conn. State Dental Commission,* 221 Conn. App. 597 (2023), cert. denied, 348 Conn. 933 (2024) (res judicata did not preclude administrative disciplinary proceeding as prior subpoena enforcement (or vice versa) action served different purposes).
- *Dusto v. Rogers Corp.*, 222 Conn. App. 71 (2023), cert. denied, 348 Conn. 939

(2024) (there was a genuine issue of material fact as to the substantial certainty exception to worker's compensation exclusivity; Judge Prescott dissented, as he did not find that plaintiff had submitted evidence creating issue of fact on motion for summary judgment).

- *Speer v. Jacobson, P.C*. 222 Conn. App. 638 (2023) (trial court improperly applied res judicata and collateral estoppel in dismissing plaintiff's quo warranto claim challenging appointment of defendant law firm as corporation counsel).
- *Finance of America Reverse, LLC v. Henry*, 222 Conn. App. 810 (2023) (on foreclosure appeals and commensurate stays and application of Practice Book § 61-11 (h)).
- *Gardner v. Dept. of Mental Health & Addiction Services*, 223 Conn. App. 221, cert. granted, 348 Conn. 954 (2024) (board properly determined that, as a matter of statutory construction, plaintiff could no longer receive temporary partial disability benefits pursuant to C.G.S. §31-308(a) after she had reached maximum medical improvement) (cert. granted on the following question: "Did the Appellate Court correctly conclude that an administrative law judge does not have the authority to award continued temporary incapacity benefits under General Statutes § 31-308 (a) after the claimant reaches maximum medical improvement and thereby becomes eligible to receive permanent partial disability benefits under § 31-308 (b)?").
- *Ambrose v. Ambrose*, 223 Conn. App. 609 (2024) (affirming disbarment of attorney based on claims made in motion to disqualify).
- *National Bank Trust v. Yurov*, 223 Conn. App. 637, cert. denied, 348 Conn. 961

(2024) (pursuant to C.G.S. § 50a-34 (b) (3), a court need not recognize a foreign judgment which is repugnant to the state's public policy; statute applies to causes of action, not to who the plaintiff is)

- *Ferreira v. Ward*, 224 Conn. App. 571 (2024) (expanded homestead exemption retroactively to judgment lien filed (and action commenced) before change in statute; trial court should have held evidentiary hearing on exemption).

VI. PERSONNEL CHANGES

Judge Dawne Westbrook joined the Appellate Court in October 2023, filling the vacancy created by Judge Prescott when he took senior status.